

REMARKS

Please correct the Correspondence Address in this case to the information of record for the undersigned (Customer Number 22848).

In the Office Action mailed 7/26/2005, Claims 1-5 and 11 were rejected as being anticipated by the prior art under 35 U.S.C. §102. Claims 6-10 and 12-20 were rejected as being obvious over the prior art under 35 U.S.C. § 103.

The abstract was objected to for use of the term "disclosed."

In response, Applicant has amended the Abstract to overcome the Examiner's objection. Applicant has further amended Claims 1 and 16 and canceled Claim 4.

Rejections under 35 U.S.C. §102(e)

Applicant's claims 1-5 and 11 were rejected as being anticipated by Walton. Applicant respectfully traverses this ground for rejection for the reasons pointed out after a discussion of the teachings of this reference.

Walton, et al., U.S. Patent No. 6,644,493

Walton is a "Weighted Garbage Can with Legs." The "garbage can" "has retractable legs that function in conjunction with a spring suspended inner platform to retract when the garbage can is empty and extend as the receptacle is filled."

While Walton does teach a container for garbage, it does not teach, hint or suggest a container for food. Furthermore, it does teach three "retractable legs 42" as a part of the

“inner platform 40” assembly; these “legs” are designed (in cooperation with the “springs 44”) to extend from apertures formed in the bottom of the “can 30” when sufficient garbage is loaded onto the “platform.”

Patentability of Independent Claim 1(as amended) and Independent Claim 11

Applicant's Claim 1, as amended, recites:

“1. A pet food storage container, comprising:

a housing defining a main chamber and an opening for accessing said main chamber, said main chamber defining a height, said housing defining an outer surface having a bottom wall;

a platform movable along said height;

elevation adjusting means attached between said platform and said housing, said elevation adjusting means configured to move said platform along said height, **said bottom side configured to prevent said elevation adjusting means from extending through said housing;** and

a lid configured to cooperate with said housing to close said opening.” **Emphasis added**

The “bottom side” recited herein clearly is not an element taught by Walton, since Walton is specifically designed to permit portions of Walton's elevation adjusting means to extend through the bottom of the housing. In fact, it is touted as a major advancement by Walton. Walton, therefore, does not teach each and every element of Applicant's claimed invention.

Applicant's Claim 11 recites:

"11. A combination vendor pet food package and mobile pet food storage container, the combination comprising:

a vendor pet food package comprising a bag defined by a bottom, a top and an opening at said top; and

a mobile pet food storage container comprising a housing defining a main chamber, at least one wheel extending from said housing and a platform configured for resting said package thereon, said platform attached to said housing in said main chamber."

As discussed above, Walton fails to teach, hint or suggest a use for anything other than the storage of garbage. Clearly, then, Walton does not teach a combination food package and container therefor. Neither of the elements of Applicant's Claim 11 is therefore taught by Walton.

By combining the elements of various well-known decisions, one can see that a prima facie case of anticipation is established only when the Examiner provides:

1. a single reference¹
2. that teaches or enables²
3. each of the claimed elements (arranged as in the claim)³
4. expressly or inherently⁴

¹ *W.L. Gore & Assocs. v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

² *Akzo N.V. v. U.S. Int'l Trade Comm'n*, 808 F.2d 1471, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986) (citing *In re Brown*, 329 F.2d 1006, 1011, 141 USPQ 245, 249 (CCPA 1964)).

³ *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ at 485.

5. as interpreted by one of ordinary skill in the art.⁵

If the Examiner fails to produce a prima facie case of unpatentability, "then without more the applicant is entitled to the grant of the patent."⁶

Here, all of the elements of Applicant's claimed invention of Claims 1 and 11 are not taught or enabled by Walton. Consequently, the Examiner has failed to make out a prima facie case of unpatentability, and these claims must be allowed. Since Claims 2 – 10 and 12-15 depend from these independent claims, they necessarily embody limitations beyond those of Claims 1 and 11. As such, claims 2-10 and 12-15 necessarily are narrower in scope than claims 1 and 11, and are therefore also not anticipated by Walton.

Rejections under 35 U.S.C. §103(a)

Applicant's Claims 6-10 and 12-20 are rejected as being obvious over the combination of Walton further in view of Kaiser and also in view of Kaiser and Waller. Applicant respectfully traverses the rejection of these claims for the reasons set forth below after a discussion of the teachings of the Kaiser and Waller references.

Kaiser, II, U.S. Patent No. 5,480,170

Kaiser discloses a "cooler caddy, and methods of constructing and utilizing the same." Among other features, Kaiser has a telescoping handle "16" and at least one flip-up tray "26." Kaiser does not disclose a use as a garbage container, nor does it disclose a

⁴ *Continental Can Co. USA v. Monsanto Co.*, 20 USPQ 2d at 1749-50.

⁵ *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991).

⁶ *In re Oetiker*, 977 F.2d 1443, 24 USPQ 2d 1443 (Fed. Cir. 1992).

use as a pet food container. In fact, it is focused on a design for a rolling cooler having flip-up table sections ("26"). There is no traveling platform contained with the Kaiser housing

Waller et al., U.S. Patent No. 6,648,349

Waller is a "Multi-purpose Cart" that discloses a general utility purpose such as for use as a gardening cart. Waller does not disclose use as a food container, or as a garbage container. Furthermore there is no traveling platform disclosed by Waller. There further are no flip-up trays extending from the Waller housing.

Patentability of Claims 6-10 and 12-20

A prima facie case of obviousness is established only when the Examiner provides:

1. one or more references⁷
2. that were available to the inventor⁸
3. where the reference(s) teach⁹
4. a suggestion to combine or modify the reference(s)¹⁰
5. the combination or modification of which would appear to be sufficient to have made the claimed invention obvious to one of ordinary skill in the art.¹¹

⁷ *W.L. Gore & Assocs. v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

⁸ See *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986).

⁹ *Akzo N.V. v. U.S. Int'l Trade Comm'n*, 808 F.2d 1471, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986) (citing *In re Brown*, 329 F.2d 1006, 1011, 141 USPQ 245, 249 (CCPA 1964)).

¹⁰ *In re Lahu*, 747 F.2d 703, 223 USPQ 1257, 1258 (Fed. Cir. 1984).

¹¹ *Rockwell Int'l Corp. v. United States*, 147 F.3d 1358, 47 USPQ 2d 1027, 1033 (Fed. Cir. 1998).

Again, whether under rejection for anticipation or obviousness, if the Examiner fails to produce a prima facie case of unpatentability, "then without more the applicant is entitled to the grant of the patent."¹²

Independent Claims 1 and 11 have been discussed above. Since neither Walton, Kaiser, nor Waller disclose or suggest a pet food storage container, these references are not analogous to Applicant's claimed invention. Certainly, there is nothing in any of these references to suggest the idea of combining them in order to create a pet food storage container. Even if they had, the resultant disclosed inventions would be distinct, since Applicant's claimed invention does not permit the leg-extending capability of Walton. In fact, it is Applicant's invention that use of the Walton design would be decidedly undesirable for two reasons: (1) holes in the bottom (or anywhere for that matter) of the housing would permit ants and other vermin to easily get at the stored food; and (2) the extending legs would make Applicant's container difficult to move when a full bag of pet food is resting on the platform. By including these two aspects in Walton, this reference actually teaches away from Applicant's claimed design, advocating against Applicant's approach, rather than rendering Applicant's claimed design obvious. It is Applicant's respectful position that the Walton design is unworkable for their operation environment (which is specifically where the problems solved by Applicant's invention are found).

Similarly, Applicant's Claim 16, as amended, recites:

"16. A mobile pet food storage container, comprising:

¹² *In re Oetiker*, 977 F.2d 1444, 24 USPQ 2d 1444 (Fed. Cir. 1992).

a housing defining a main chamber and an opening for accessing said opening,
said main chamber defining a height;

a platform movable along said height;

elevation adjusting means attached between said platform and said housing, said
elevation adjusting means configured to move said platform along said height, said
elevation adjusting means fully contained within said housing without the ability of
protruding outwardly therefrom;

a tray extendable from said housing; and

a lid configured to cooperate with said housing to close said opening.”

Again, the extending legs of Walton are specifically excluded from the device of this claim. The Walton legs, then, would be classified as “protrusions” from the “housing,” a condition which is prevented by the claimed housing of Applicant’s Claim 16.

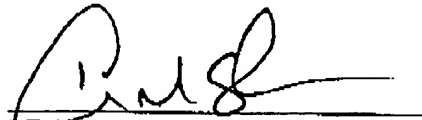
Nothing in Walton, either alone or in combination with the other cited references, includes the suggestion to modify these references in order to arrive at Applicant’s claimed design. On the contrary, none of the references is in a field analogous to Applicant’s claimed invention, nor is there any suggestion as to combining these references for any reason, since Walton is in a field that is distant from Applicant’s invention, as well as from Kaiser and Waller. Consequently, the Examiner has provided insufficient evidence to sustain his rejection of these claims as being obvious over the cited prior art, and therefore a prima facie case of obviousness has not been made, and all of these claims must be allowed.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests that the application be reconsidered, the claims be allowed, and the case passed to issue.

Respectfully submitted,

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